

REMARKS/ARGUMENTS

The Office Action of February 25, 2009, has been carefully reviewed. Claims 16, 18, 22 and 34 are amended herein. Claims 2-19, 21-23, and 25-37 are presently pending, with claims 16, 17, 18, 19, 21, 22, 34-37 being the independent claims. Reconsideration is respectfully requested.

Information Disclosure Statement

Applicants regret inadvertent omission of copies of references #8 and #9 for the information disclosure statement filed on October 24, 2008. Along with this paper, Applicants have submitted copies of the above references for consideration by the Examiner.

Claim Rejections – 35 USC § 102

Claims 16, 18, 22, 25-34 and 36 were rejected under 35 USC 102(e) as being anticipated by Chen (US Patent Application No. 2003/0007466).

While Applicants do not agree with the Examiner's conclusion, only for the sake of expedient prosecution of the present application, Applicants have chosen to amend independent claims 16, 18, 22, 34 and 36 to add limitations that the Examiner had indicated in the prior Office Action dated July 23, 2008, would put claim 16 in condition for allowance. The amendments are supported in the original specification at, *inter alia*, Figure 5, elements 508 and 510, and paragraphs [0124] and [0160]. No new matter is being added.

Claims 25-33 depend from and further define claim 16, and therefore benefit from the amendment to claim 16.

Accordingly, claims 16, 18, 22, 25-34 and 36 are now in condition for allowance and the 35 USC 102 rejection should be reversed.

Claim Rejections – 35 USC § 103

1. Claim 23 was rejected under 35 U.S.C. 103(a) as being unpatentable over Chen.

Claim 23 depends from independent claim 16. Applicants therefore submit that claim 23 is in condition for allowance at least for the reasons presented with respect to claim 16 above.

2. Claims 17, 19, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pankaj (U. S. Patent No. 6,807,426) in view of Malmlof (U. S. Patent No. 6,594,241).

Claims 17, 19 and 21 are method, apparatus and computer medium claims related to a method of transmitting data by transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, receiving a rate assignment responsive to the request for the rate, the rate assignment indicating a scheduled duration and a scheduled rate applicable for the scheduled duration, and transmitting data, the transmitting responsive to the rate assignment, wherein the data is transmitted for the scheduled duration at the scheduled rate.

Pankaj discloses an access network 122 receiving a data request from an access terminal 126. *See* Column 5, lines 28-35 and Figure 1B. The data request specifies the data rate at which the data is to be sent, the length of the data packet to be transmitted, and the sector from which the data is to be sent. *Id.* The access terminal 126 determines the data rate based on the quality of the channel between the access network 126 and the access terminal 126, for instance, through use of a carrier-to-interference ratio. *Id.* “In operation, the AT [access terminal] 126 continuously monitors the quality of the Channel to calculate a data rate at which the AT 126 is able to receive a next data packet transmission. The AT 126 then generates a DRC [data rate

control] value; the DRC value is transmitted to the AN [access network] 122 to request a data transmission.” Column 5, lines 56-63.

Because transmitting a request for a rate based on a carrier-to-interference ratio cannot reasonably be said to be “transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested,” Pankaj is deficient.

In rejecting Claim 17 (and therefore claims 19 and 21), the Examiner holds that Malmof discloses the data in the buffer exceeds a buffer depth at column 2, lines 59-61. However, in relevant portion, Malmof states “[o]ne way of determining when to switch a user connection from a dedicated channel to a common channel is to monitor the amount of data currently being stored in a transmission buffer associated with the user connection.”

Applicant respectfully submits that the Examiner’s argument fails because while Malmof teaches monitoring a buffer to make a decision regarding a type of the connection (dedicated or common channel), the present invention teaches monitoring a buffer to control transmission of a request for a rate. In other words, Malmof teaches that a buffer is monitored to decide the type of connection used for communication, and not whether to transmit a request, as in the present invention. Hence, neither of the applied references teach the claimed features, nor does any combination of the references.

Based on the above, Applicants submit that Pankaj in view of Malmof does not render obvious claims 17, 19 and 21, and their 35 USC 103 rejection should be reversed.

3. Claims 2-15, 35 and 37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pankaj and Malmlof, further in view of Chen.

Claims 2-15 depend from and further limit independent claim 17. Therefore, at least for the reasons presented above with respect to claim 17, claims 2-15 are in condition for allowance.

Claims 35 and 37 recite subject matter substantially similar to claim 17 and are therefore in condition for allowance at least for the arguments presented with respect to claim 17 above.

CONCLUSION

Applicants submit, as each objection and rejection of the February 25, 2009 Office Action has been addressed, that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

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